

## **Appeal by Republic School District to FCC**

### **Appealing Administrator's Decision on Appeal dated 7/1/2011 and 8/1/2011**

August 28, 2011

Re: Denial of Request for Deadline Extensions

Applicant: Republic School District  
BEN: 145493  
30306 E. Highway 20  
Republic, WA 99166-8746

Inquiries regarding this appeal should be directed to:  
Dr. Shirley Bauer  
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#### **I. INTRODUCTION**

Republic School District 309 ("Republic"), a small district in rural Washington state, met all requirements to qualify for E-rate funding with the exception of its inadvertent failure to file the FCC Form 472's. When this failure was discovered, Republic sought deadline extensions that were denied by USAC, resulting in nonpayment of two FRNs. USAC's denials of Republic's extensions were improper in light of clear FCC precedent that such funding should not be denied when the school district has made good faith efforts to comply with programmatic requirements. USAC's denials create undue hardship for Republic--an otherwise eligible district but for the inadvertent failure to comply with a USAC procedural deadline. For these reasons, Republic asks FCC to grant this appeal, to accept for filing Republic's Form 472's, and to provide the reimbursement to which Republic is otherwise entitled.

#### **II. FACTUAL BACKGROUND**

##### **A. Procedural History**

On December 16, 2010, Republic School District requested invoice deadline extensions for the following FRNs:

Funding Year: 2000  
Form 471 Application Number: 194826  
Funding Request Number: 418321  
Committed Amount: \$4095.00

Funding Year: 2007  
Form 471 Application Number: 558352  
Funding Request Number: 1539857  
Committed Amount: \$5,593.25

On April 25, 2011, USAC denied the extensions with the following explanation:

Current guidelines and procedures require Invoice Deadline Extension requests to be filed by the end of the relevant invoice period for the service category of the FRN requiring the extension (120 days after the end of the service delivery date). The extension request was not filed in a timely manner, so it is denied.

On July 20, 2011 and on August 1, 2011, USAC denied the appeals submitted to them with the following explanation:

Current deadline guidelines and procedures do not allow approval for the reason submitted. Invoice Deadline Extension requests should be filed by the end of the relevant invoice receipt period for the service category of the FRN requiring an extension (120 days after the end of the service delivery date). You did not demonstrate in your appeal that you filed an extension request in a timely manner. Therefore, the appeal is denied.

## **B. Republic School District**

Republic School District is a small district of approximately 400 students. Staff members are frequently tasked with multiple, and often changing, roles. For example, at the time Republic appealed to USAC, Teena McDonald was the authorized E-rate contact person. Ms. McDonald also served as the District Superintendent, Director of Special Programs, and Principal of Republic Alternative Parent Partner Program – all three duties of which constitute full time jobs in and of themselves. She has since resigned and has been replaced with a new district administrator.

In 2010, Republic School District signed an LOA with Educational Service District 101 in Washington State to receive E-rate assistance. E-Rate services are provided through ESD 101 and E-Rate and Educational Services, LLC. After execution of the LOA, Republic School District's past E-rate records were reviewed and it was found that invoices had not been filed for the above listed FRNs.

This inadvertent failure to file the FRNs was the result of staff transitions and miscommunication and misunderstanding about the E-rate process among district personnel. As with many small school districts, the knowledge base for the complicated E-rate process was limited. Since 2000, Republic has had one interim and five superintendents. Additionally, the business manager who assisted with the E-rate process was severely injured in an auto accident. Yet, despite turnover and misunderstanding about this process, the Republic staff completed the often difficult portions of the application process and was authorized funding; they just inadvertently failed to file their 472's.

### III. ANALYSIS

The requirement for filing the Form 472 is a USAC procedural requirement; it is not a substantive rule of the E-rate program. While Republic recognizes the need for procedural requirements, rigid adherence to these rules should not be applied when the result is unfair, as it is in this case. Services have already been received and Republic has complied with all other E-rate program rules as to these services. To deny funding which has already been approved due to failure to comply with the filing deadline for Form 472 compromises the goal of ensuring discounted services to the schools. As the FCC has clearly established, a denial of funding in such an instance does not serve the public interest.

The FCC has twice considered the same facts set forth in Republic's appeal and, in both decisions, has ruled that USAC's failure to accept the Form 472s was erroneous and in contravention of Program goals. **Federal Communications Commission DA 10-999, Alton Community Unit Sch. Dist. No. 11**, adopted June 2, 2010, and **Canon-McMillan Order: Federal Communications Commission DA 08-2385**, adopted October 30, 2008. Both orders are attached in their entirety to this appeal.

In the 2008 Order of *Canon-McMillan*, 20 applicants filed appeals to the FCC. All had been denied funding by USAC because they had failed to file their FCC Forms 472 or FCC Forms 474 in a timely manner. In the *Alton* Order, issued in 2010, another 49 applicants appealed to the FCC for denial of their funding – they too had failed to file their Forms 472 or 474 in a timely manner. In all 69 appeals, the FCC found on behalf of the applicants. The key findings are listed below:

#### A. *Canon-McMillan, Federal Communications Commission DA 08-2385*

*In this order, we grant 20 appeals of decisions by the Universal Service Administrative Company (USAC) concerning the schools and libraries universal service support mechanism (also known as the E-rate program) denying funding because the applicants' invoice forms were untimely filed or not received by USAC. As explained below, we find that good cause exists to grant these appeals and remand the underlying applications associated with these appeals to USAC for further action consistent with this order.*

*Eighteen appeals involve the untimely filing of the FCC Form 472 and two appeals involve the untimely filing of the FCC Form 474.<sup>15</sup> Some petitioners assert that staff changes or inadvertent errors or typographical errors by the applicant's staff resulted in incorrect information being submitted on the FCC Form 472 or failure to file the FCC Form 472 on a timely basis.*

*Based on the facts and circumstances of these specific cases, we find that good cause exists to grant these appeals. Generally, these applicants claim that staff changes or inadvertent errors on the part of their staff resulted in the late filing or failure to file the FCC Form 472 or FCC Form 474. We believe that the petitioners have demonstrated that they made good faith efforts to comply with programmatic rules. We note that those tasked with working on E-rate applications are typically school administrators, technology coordinators, teachers and librarians who may have little experience with invoice requirements for the E-rate program. This may be particularly true of staff at small school districts or libraries. We expect that, as these schools and libraries continue to participate in the E-rate program, they will become more experienced with the invoice requirements of the program.*

Moreover, we emphasize that these applicants missed a procedural deadline and did not violate a substantive rule. In the Bishop Perry Order, the Commission found that, under certain circumstances, rigid adherence to certain E-rate rules and requirements that are “procedural” in nature does not promote the goals of section 254 of the Act – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest. This is especially true in these circumstances, where the applicants are at the end of the process and have already received service and complied with all other E-rate program rules to date.

Finally, we find that denying the petitioners’ requests would create undue hardship and prevent these otherwise eligible schools and libraries from receiving funding that they need to bring advanced telecommunications and information services to their students and patrons. Requiring USAC to take these additional steps will not reduce or eliminate any invoice review procedures or program requirements that applicants must comply with to receive funding. Although the invoice deadline is an important element in helping the Commission guard against the waste of program funds, there is no evidence at this time in the record that the petitioners engaged in activity to defraud or abuse the E-rate program. We further note that granting these requests should have minimal effect on the Fund as a whole.

**B. Alton, Federal Communications Commission, DA 10-999<sup>2</sup>**

Upon review of these appeals, we find, consistent with the decision in Canon-McMillan, that non-payment of these invoices is not warranted, given that the applicants missed a USAC procedural deadline and did not violate a Commission rule. Therefore, we remand the invoices at issue here to USAC for further action consistent with this order.

In this order, we grant 49 appeals of decisions by USAC denying funding because it found that the invoice forms, either the FCC Form 472 or the FCC Form 474, were late or not received by USAC. Petitioners present a number of explanations for the timing of their invoice submissions, or the lack thereof. Some petitioners assert that staff turnover or miscommunications between staff as E-rate duties were transitioned to a new employee resulted in a failure by the applicants to file their invoice forms on time.

Based on the facts and circumstances of these specific cases, we find that good cause exists to grant these appeals. As the Bureau found in the Canon-McMillan Order, we find that complete rejection of these invoices is not warranted, given that the applicants missed a USAC procedural deadline and did not violate a Commission rule.<sup>25</sup> As the Commission noted in Bishop Perry Middle School, a departure from required filing deadlines may be warranted upon careful review of the petitioner’s case and when doing so will serve the public interest.<sup>26</sup> Generally, these applicants claim that staff changes or inadvertent errors on the part of their staff resulted in the late filing or failure to file the FCC Form 472 or FCC Form 474. We believe that the petitioners have demonstrated that they made good faith efforts to comply with programmatic rules. We note that those tasked with working on E-rate applications are typically school administrators, technology coordinators, teachers, and librarians who may have little experience with the invoice requirements for the E-rate program. This may be particularly true of staff at small school districts or libraries.

We find that denying the petitioners’ requests would create undue hardship and prevent

*these otherwise eligible schools and libraries from receiving funding that they need to bring advanced telecommunications and information services to their students and patrons. Requiring USAC to take these additional steps will not reduce or eliminate any invoice review procedures or program requirements with which applicants must comply in order to receive funding. Although the invoice deadline is an important element in helping the Commission guard against the waste of program funds, there is no evidence at this time in the record that the petitioners engaged in activity to defraud or otherwise abuse the E-rate program. We further note that granting these requests should have a minimal effect on the fund as a whole.*

#### **C. Federal Communications Commission Order, FCC 11-60**

*The FCC released adopted regulations as recently as April 12, 2011, further ordering an extension of deadlines for applicants who needed to submit corrections of clerical or ministerial errors on forms. Although, this order does not speak directly to deadline extensions for invoicing, it does by its very nature indicate a willingness by the FCC to consider and extend applicant's time for corrections of errors that have inadvertently occurred with no ill intent by the district. It provides a mechanism for an additional correction process that may not be discovered in time to meet current deadlines by ever-changing district staff who tend to be overwhelmed with the e-rate process. As is this case, discovery was not made until the district chose to seek assistance with the e-rate process.*

#### **IV. CONCLUSION**

It is clear from the above FCC precedent, precedent that USAC is required to follow, that USAC erred in its denial of Republic School District's requests for extensions to file its Form 472s and subsequent appeals. Republic brought this appeal to USAC in the first instance so that it could correct this error and provide to Republic the funding that has otherwise been approved. The district missed USAC procedural deadlines but did not act in a way to defraud or violate FCC rules. This is not an instance where there was waste, fraud or abuse, misuse of funds, or failure to adhere to core program requirements.<sup>1</sup> Rather, Republic acted in good faith in its efforts to comply with all programmatic requirements. Denial of these Invoice Extension Appeals places undue hardship on a small district which is already struggling with staff turnover and heavy staff workloads.

Finally, Republic notes that it has taken proactive steps to prevent such procedural errors from occurring in the future by hiring outside E-rate assistance. Republic asks that USAC comply with the intent of the E-rate program and grant this appeal – thereby helping to bring advanced telecommunications and information services to the students of the small rural Republic School District.

The commission made the following statement in Document FCC 03-101 which further supports the request to be allowed to claim the funds : "Consequently, we adopt a rule that authorizes USAC to use funds budgeted from subsequent funding years to fund discounts for successful appeals in the unlikely case that the appeals reserve is exhausted." Republic School District's request to be allowed to file a FCC Form 472 for two

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<sup>1</sup> See *Academia Claret Order*, 21 FCC Rcd 10703 (Wireline Comp. Bur. 2006) and *Odyssey Charter Sch. Order*, FCC DA 11-897 (May 17, 2011).

FRNs, would be the minimal amount of \$9688.25 from this authorized fund. For Republic School District, however, it is a significant amount that would enhance their educational mission in providing technological opportunities for students. The past and current economical climate where educational cuts have been overwhelming has made the e-rate discounts more valuable to students than can be imagined.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shirley Bauer".

Shirley Bauer  
On behalf of Republic School District 309

*FCC Decisions Cited (attached in their entirety to this appeal):*

- 1) *Federal Communications Commission Order DA 08-2385. File Nos. SLD-360219, et al. Canon-McMillan School District.*
- 2) *Federal Communications Commission Order DA 10-999. File Nos. SLD-518052, et al. Alton Community Unit School District 11.*
- 3) *Federal Communications Commission Order FCC 11-60*